UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NORFOLK SOUTHERN RAILWAY COMPANY
Three Commercial Place
Norfolk, VA 23510-9241

Plaintiffs,

v.

INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS -- TRANSPORTATION DIVISION
General Committee of Adjustment for Norfolk Southern Railway (Nickel Plate, Wabash, and portions of former Conrail)
817 Kilbourne Street
Bellevue, OH 44811-9704

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
General Committee of Adjustment
NS Northern Lines/W&LE/CF&E
2117 West Alto Road
Kokomo, IN 46902

and

Nicholas Greficz,
Local Chairman, SMART-TD
4342 Pheasant Run Ln
Newport, MI 48166

and

Civil Action No. ___________

Judge: ____________________________

Peter Minter,
Local Chairman, SMART-TD
8896 American
Detroit, MI 48204

and

Scott Cole,
Local Chairman, SMART-TD
2700 Noon Rd
Jackson, MI 49201-9191

and

Greg Canty,
Local Chairman, BLET
14421 Asbury Park
Detroit, MI 48227-1391

and

James Reid,
Local Chairman, BLET
1415 M. Maple Leaf Rd.
Lapeer, MI 48446-8085

and

Ryan M. Morris,
Local Chairman, BLET
67554 Burg Rd.
Sturgis, MI 49091-9628

Defendants.

VERIFIED COMPLAINT
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Norfolk Southern Railway Company ("NSR") brings this action to enforce the mandatory dispute resolution procedures of the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.* A dispute has arisen between NSR and Defendants concerning the interpretation and application of various collective bargaining agreements ("CBAs") between NSR and two labor organizations: International Association of Sheet Metal, Air, Rail and Transportation Workers - Transportation Division ("SMART-TD" or "Union") and Brotherhood of Locomotive Engineers and Trainmen ("BLET"). SMART-TD and BLET are referred to collectively herein as "the Internationals." Under the RLA, disputes concerning the interpretation or application of collective bargaining agreements are subject to mandatory arbitration. Defendants, which are subordinate bodies of the Internationals and officers of such subordinate bodies, have threatened to strike NSR in violation of their obligation to arbitrate disputes over the meaning and interpretation of CBAs. The dispute involves NSR's plan to implement service between Toledo, Ohio and three Detroit Edison plants in the Detroit, Michigan area, utilizing crews based in Toledo. A strike by Defendants would cause a shutdown of NSR's rail operations, and would deprive shippers and the public of essential freight transportation service and cause severe and irreparable harm.

Accordingly, NSR has brought this action seeking: (1) a declaratory judgment that the dispute between the parties over the interpretation or application of the CBAs is a "minor dispute" under the RLA, 45 U.S.C. § 151, *et seq.*; and (2) a declaratory judgment that Defendants' threats to engage in a strike or other job action over this minor dispute violate Defendants' obligation to arbitrate such disputes under Sections 3 and 2 First of the RLA, 45 U.S.C. §§ 152, First and 3, and (3) preliminary and permanent injunctive relief compelling Defendants to resolve the present dispute through the mandatory and exclusive arbitration procedures under Section 3 of the RLA, 45 U.S.C. § 153, and to refrain from striking or otherwise engaging in any job action over such a dispute.

PARTIES

1. Plaintiff, NSR is a Virginia corporation with its principal place of business in Norfolk, VA, and is a "carrier" within the meaning of Section 1, First of the RLA, 45 U.S.C. § 151, First. NSR currently operates a Class I railroad on a system-wide basis over 21,300 route miles in 22 states, the District of Columbia, and the Province of Ontario, Canada, including in the counties of Lenawee, Monroe and Wayne, MI.

2. SMART-TD, which is not named as a defendant herein, is an unincorporated labor organization in which employees participate and which exists for the purpose of, among other things, dealing with carriers pursuant to the RLA concerning rates of pay, rules and working conditions, including negotiation and administration of collective bargaining agreements. SMART-TD is a

"representative" within the meaning of Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth. SMART-TD represents NSR employees in the craft or class of "Conductors and Trainmen," which consists of Conductors, Brakemen and Switchmen. SMART-TD was formerly known as the United Transportation Union ("UTU").

3. BLET, which is not named as a defendant herein, is an unincorporated labor organization in which employees participate and which exists for the purpose of, among other things, dealing with carriers pursuant to the RLA concerning rates of pay, rules and working conditions, including negotiation and administration of collective bargaining agreements. BLET is a "representative" within the meaning of Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth. BLET represents NSR employees in the craft or class of "Locomotive Engineers." BLET was formerly known as the Brotherhood of Locomotive Engineers ("BLE").

4. Defendant, International Association of Sheet Metal, Air, Rail and Transportation Workers - Transportation Division, General Committee of Adjustment for Norfolk Southern Railway (Nickel Plate, Wabash, and portions of former Conrail) ("SMART-TD GCA"), a subordinate body of SMART-TD, is an unincorporated labor organization in which employees participate and which exists for the purpose of, among other things, dealing with carriers pursuant to the RLA concerning rates of pay, rules and working conditions, including negotiation and

administration of collective bargaining agreements. SMART-TD GCA is a "representative" within the meaning of Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth, and represents employees of NSR in this judicial district.

5. Defendant, Brotherhood of Locomotive Engineers and Trainmen, General Committee of Adjustment, NS Northern Lines/W&LE/CF&E ("BLET GCA"), a subordinate body of BLET, is an unincorporated labor organization in which employees participate and which exists for the purpose of, among other things, dealing with carriers pursuant to the RLA concerning rates of pay, rules and working conditions, including negotiation and administration of collective bargaining agreements. BLET GCA is a "representative" within the meaning of Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth, and represents employees in this judicial district.

6. Defendant, Nicholas Greficz is a Local Chairman of SMART-TD GCA and is an officer and agent of SMART-TD GCA, and resides at the address listed in the caption.

7. Defendant, Peter Minter is a Local Chairman of SMART-TD GCA and is an officer and agent of SMART-TD GCA, and resides at the address listed in the caption.

8. Defendant, Scott Cole is a Local Chairman of SMART-TD GCA and is an officer and agent of SMART-TD GCA, and resides at the address listed in the caption.

9. Defendant, Greg Canty is a Local Chairman of BLET GCA and is an officer and agent of BLET GCA, and resides at the address listed in the caption.

10. Defendant, James Reid is a Local Chairman of BLET GCA and is an officer and agent of BLET GCA, and resides at the address listed in the caption.

11. Defendant, Ryan M. Morris is a Local Chairman of BLET GCA and is an officer and agent of BLET GCA, and resides at the address listed in the caption.

JURISDICTION AND VENUE

12. Jurisdiction exists pursuant to the RLA, 45 U.S.C. §§ 151-188, and 28 U.S.C. §§ 1331, 1337.

13. NSR and Defendants are actively doing business in the counties of Lenawee, Monroe and Wayne within the Eastern District of Michigan.

14. Venue over this action properly lies in the Eastern District of Michigan, 28 U.S.C. § 1391(b)(1).

EXISTENCE OF A MINOR DISPUTE AND NSR'S LIKELIHOOD OF SUCCESS ON THE MERITS

15. Under the RLA, disputes concerning the interpretation or application of CBAs are subject to mandatory arbitration. Section 3 of the RLA requires such disputes to be resolved exclusively through arbitration before the National Railroad

Adjustment Board ("NRAB") or before an arbitration panel of coordinate jurisdiction established by the parties pursuant to the RLA (known as a Public Law Board or a Special Board of Adjustment). 45 U.S.C. § 153.

16. NSR and SMART-TD and its predecessor labor organization, UTU, have been parties to a series of CBAs. The terms of the CBAs, together with terms implied therein, including past practice and management prerogative, have established the rates of pay, rules and working conditions of employees represented by SMART-TD.

17. NSR and BLET and its predecessor labor organization, BLE, have been parties to a series of CBAs. The terms of the CBAs, together with terms implied therein, including past practice and management prerogative, have established the rates of pay, rules and working conditions of employees represented by BLET.

18. Disputes over the interpretation or application of RLA collective bargaining agreements are known as "minor disputes." Under the RLA, a dispute is a "minor dispute" subject to mandatory arbitration so long as the rail carrier's position with respect to the merits of the dispute is not "frivolous or obviously insubstantial." *Consolidated Rail Corp. v Railway Labor Execs. Ass'n*, 491 U.S. 299, 303-305 (1989).

19. A dispute has arisen over NSR's right to use Toledo-based crews to haul freight to and from a new customer (Detroit Edison) as opposed to using Detroit-based crews to haul that freight. Defendants have argued that the applicable collective bargaining agreements do not allow the use of Toledo-based crews to haul the freight.

20. In October 2016, NSR preliminarily informed the General Chairmen for both SMART-TD and BLET that it was contemplating instituting the service for Detroit Edison.

21. On or about December 5, 2016, NSR discussed the service for Detroit Edison in separate telephone calls with the General Chairmen for both SMART-TD and BLET. The respective General Chairmen argued that the existing collective bargaining agreements, as well as a 1998 Implementing Agreement, negotiated in connection with Norfolk Southern Corporation's acquisition of portions of the former Consolidated Rail Corporation ("Conrail") system, prevented NSR from using Toledo-based crews to haul the freight to Detroit Edison's plants. NSR explained that neither the existing collective bargaining agreement nor the 1998 implementing agreement restricted the planned service. NSR further explained that, nonetheless, this planned service was expressly permitted under two national agreements from 1996 covering both SMART-TD

and BLET. Lastly, NSR explained that the 1996 agreements contained a detailed dispute resolution clause that provides for arbitration of disputes.

22. Article XI of the 1996 UTU National Agreement, entitled "Enhanced Customer Service," ("ECS") provides as follows:

> When an individual carrier has a customer request for particularized handling that would provide more efficient service, or can show a need for relaxation of certain specific work rules to attract or retain a customer, such service may be instituted on an experimental basis for a six-month period.

Article IX of the 1996 BLE National Agreement includes an identical ECS article. Both of these ECS articles remain in effect today.

23. The ECS articles in both the 1996 UTU National Agreement and the 1996 BLE National Agreement require NSR to provide SMART-TD and BLET with at least 48 hours' notice prior to implementing the new service, including a description of the service and the need to provide the service, along with a description of any work rules that may require relaxation for the service to be implemented. Among the work rules expressly identified as subject to relaxation under the ECS articles are yard or switching limits, on/off duty points and seniority boundaries.

24. Both ECS articles also include a detailed dispute resolution clause, providing for the new service to be allowed on an experimental basis for a six

month period, with any disputes that remain unresolved at the conclusion of the six month experimental period to be referred to arbitration.

25. Pursuant to the ECS articles in the 1996 UTU and BLE Agreements, NSR formally notified SMART-TD and BLET on December 6, 2016 of its plans to institute the new service. Specifically, NSR informed SMART-TD and BLET that NSR had been retained to deliver coal to three separate coal-fired power plants operated by Detroit Edison in Monroe, MI, Trenton, MI and River Rouge, MI. Because of specific agreed upon delivery windows required by Detroit Edison, and the need to stage and store loaded or empty coal trains and other additional equipment, NSR determined that the service to the Detroit Edison plants would be most efficiently staffed utilizing crews based in Toledo. NSR informed SMART-TD and BLET that it intended to exercise its rights under the ECS articles to expand the yard or switching limits of the Toledo Terminal to encompass new yard facilities in the Toledo area that NSR was constructing to provide the service required by Detroit Edison, and to have crews report for duty at these locations in Toledo. NSR informed SMART-TD and BLET that it intended to institute this service on or about January 1, 2017, and that it further intended to begin the process of paying employees to qualify over NSR territory from Toledo north to Detroit on or about December 8, 2016.

26. Defendants objected to NSR's announced intention to staff the new service for the Detroit Edison plants utilizing crews based in Toledo. Defendants took the position that the use of Toledo-based crews to staff the new service violates unspecified provisions in their current collective bargaining agreements and the 1998 Implementing Agreement from the Conrail transaction. In addition, a representative of SMART-TD took the position that NSR's use of Toledo-based crews created a "major dispute" under the RLA.

27. The current collective bargaining agreements contain no prohibition against establishing service as contemplated by NSR.

28. Likewise, the 1998 Implementing Agreement does not prohibit NSR from establishing the service to Detroit Edison utilizing Toledo-based crews. The 1998 Implementing Agreement established a single seniority district for NSR's Lake Region Hub, which included NSR's operations at Toledo and Detroit. Employees at Toledo and Detroit are on the same seniority roster and may work at either location. The Implementing Agreement further established geographic zones within the Lake Region Hub to promote greater work force stability and permit employees with pre-transaction seniority in a geographical area to protect work opportunities relatively within the same area.

29. The geographic zones created by the 1998 Implementing Agreement have not been interpreted to restrict NSR's ability to utilize crews based in one

zone from working into another zone. On the contrary, NSR on numerous occasions has utilized crews whose home terminal is in one zone (as defined by the Implementing Agreement) to work into another zone. NSR also has changed the manner in which it has staffed service operating between geographic zones from a double-ended pool with crews having home terminals at both ends in different zones to single ended pools with all of the work performed by crews based at one end.

30. Moreover, nothing in the 1998 Implementing Agreement supersedes or limits NSR's rights to establish service in accordance with the applicable collective bargaining agreements and/or the ECS articles in the 1996 UTU and BLE National Agreements.

31. In addition to serving formal notice of its intention to institute the service between Toledo and the Detroit Edison plants, NSR also sent letters on December 6, 2016 to the General Chairmen for both SMART-TD and BLET outlining the reasons why NSR has the right to have employees from Toledo protect service to the Detroit Edison facilities. NSR also invited the General Chairmen of both SMART-TD and BLET to meet with NSR's Labor Relations department to discuss any concerns regarding the new service. NSR offered to meet with SMART-TD on December 15, 2016 and with BLET on December 20, 2016.

32. Defendants have not provided NSR with any assurance that they will not call a strike against NSR over their claims that the new service creates a major dispute under the RLA pending the outcome of those meetings.

33. On December 7, 2016, NSR management personnel in Detroit discovered a fax of a letter on joint SMART-TD and BLET letterhead addressed to "**ALL** UNION CRAFT MEMBERS IN DETROIT," (emphasis in original) which stated:

> Norfolk Southern has decided to violate the Railway Labor Act and current collectively bargained agreements by qualifying Toledo employees in the Detroit Zone in preparation for the DTE business. The General Chairmen for both Organizations have openly opposed these plans. Labor Relations along with Division managers have ALL been put on notice that any further action of qualifying the Toledo contingent in Detroit will constitute a MAJOR Labor Dispute in the Organization's eyes and relief will be sought by exercising our rights under the Railway Labor Act. We need to organize now and be prepared. If Norfolk Southern management refuses to acknowledge our existing agreements or keep working conditions the same until a remedy is negotiated, we will have no choice but to STRIKE.
>
> NO action should be taken by ANY member until notified by a Union Officer. Your Local Officers are preparing for a STRIKE and ALL members should prepare and stand ready for official notice to man picket line locations. Please contact an Officer from your Local with any preferred time and location you wish to picket.

34. The dispute over NSR's ability to institute the new service to Detroit Edison utilizing Toledo based crews in accordance with the current existing

collective bargaining agreements, the 1998 Implementing Agreement and the ECS articles of the 1996 National Agreements constitutes a minor dispute under the RLA. As such, the labor arbitration mechanisms specified in the RLA, as well as the respective agreements, provide the exclusive means for resolving disputes over the interpretation or application of those agreements, or terms implied therein, including past practice and managerial prerogative. NSR's position with respect to the merits of that dispute is not "frivolous or obviously insubstantial" so as to constitute a "major dispute" under the RLA.

35. Defendants do not have the legal right to strike or engage in other self-help to protest the above actions. Rather, under the RLA, the proper forum or process for Defendants to resolve a dispute over the above actions is through arbitration.

36. Defendants' continued refusal to acknowledge that any dispute over the above actions is not a "major dispute," their refusal to give assurance that they will not strike, and the explicit threat in the December 7, 2016 letter has created a real, live and ripe controversy, warranting relief from this Court.

THE IMMEDIATE AND IRREPARABLE HARM TO NSR OUTWEIGHS ANY POTENTIAL HARM TO THE DEFENDANTS AND WILL SERVE THE PUBLIC INTEREST

37. NSR has initiated this action because NSR, its customers and the public will suffer irreparable harm if the Defendants cause a strike against NSR.

Other NSR employees who are not SMART-TD and BLET will likely honor any picket lines, resulting in a near total shutdown of NSR's interstate railroad. Continued disruption to the NSR system would, in turn, disrupt the national rail freight transportation system.

38. The actions of Defendants described above threaten to cause immediate and irreparable injury to NSR, to NSR's employees, to NSR's customers and to the public. Among other things, a strike against NSR will cause NSR to be deprived of substantial operating revenues and NSR will be rendered unable to use and maintain railroad properties in which it has substantial investments; NSR employees, many of whom are not represented by SMART-TD or BLET will be deprived of their earnings for the duration of the unlawful activity; and NSR's rail operations, which are a vital part of the national railroad freight service system, will be interrupted, depriving many businesses, governmental entities and other shippers and persons of essential freight transportation services. Further, NSR's operations will be severely disrupted throughout the several states in which it operates in interstate commerce. These damages will be immediate and irreparable.

COUNT I – MINOR DISPUTE

39. NSR incorporates by reference as if fully set forth herein each and every allegation of Paragraphs 1 through 38 above.

40. This Cause of Action arises under Sections 2 First and 3 of the Railway Labor Act, 45 U.S.C. §§152 First, 153.

41. There exists a current, live and ripe controversy that warrants declaratory and injunctive relief from this Court.

42. NSR has collective bargaining agreements with SMART-TD and BLET, which remain in full force and effect. These agreements, together with other established working conditions, set forth the terms and conditions of employment of NSR's employees represented by SMART-TD and BLET.

43. NSR contends that its labor agreements with SMART-TD and BLET, as properly interpreted, permit NSR to institute the new service to Detroit Edison utilizing Toledo based crews.

44. Defendants, as subordinate bodies of SMART-TD and BLET and officers and agents of such subordinate bodies, dispute NSR's interpretation of the applicable collective bargaining agreements, and maintain that the collective bargaining agreements prohibit NSR from utilize Toledo based crews to service the Detroit Edison plants, and that NSR must utilize Detroit based crews to staff the new service.

45. The dispute between Defendants and NSR is a minor dispute under the RLA, and thus subject to mandatory arbitration. The nature of the dispute is one that arises out of the interpretation or application of the parties' collective

bargaining agreements, and NSR's position with respect to the merits of the dispute is not frivolous or obviously insubstantial; indeed, NSR's position is supported by the plain language of the 1996 National Agreements, arbitration awards and long-standing practice.

46. Defendants' threat to cause a strike over the instant dispute violates Defendants' duties under the RLA to pursue and exhaust the exclusive, administrative remedies for minor disputes which are set forth in Section 3 of that Act, including final and binding arbitration. The RLA precludes strikes, work stoppages, or other forms of self-help over minor disputes.

47. NSR has at all times been willing to comply with the dispute resolution/arbitration procedures of the RLA and has exercised and is continuing to exercise reasonable efforts to resolve this dispute with Defendants.

48. NSR has exhausted all available remedies under the RLA to prevent Defendants' unlawful activity and has no adequate remedy at law.

49. As to each item of relief sought herein, greater injury will be inflicted on the public and NSR if such relief is denied than will be inflicted upon Defendants by the granting thereof.

COUNT II – BREACH OF SECTION 2 FIRST

50. NSR incorporates by reference as if fully set forth herein each and every allegation of Paragraphs 1 through 49 above.

51. This Cause of Action arises under Section 2 First of the RLA, 45 U.S.C. §152 First.

52. Section 2 First imposes an affirmative duty on the parties:

> to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

45 U.S.C. §152 First.

53. Defendants have breached their obligation under Section 2 First to settle the dispute with NSR concerning NSR's right to institute the service to Detroit Edison using Toledo based crews through the dispute resolution/arbitration procedures mandated by the RLA by threatening to strike NSR over the dispute.

54. Defendants' threatened strike against NSR threatens to cause substantial disruption to NSR and to the national freight transportation system.

55. NSR has been willing at all times to comply with its duties under Section 2 First and has exercised and is continuing to exercise reasonable efforts to resolve this dispute with Defendants.

56. NSR has exhausted all available remedies under the RLA to prevent Defendants' unlawful activity and has no adequate remedy at law.

57. As to each item of relief sought herein, greater injury will be inflicted on the public and on NSR if such relief is denied than will be inflicted upon Defendants by the granting thereof.

PRAYER FOR RELIEF

WHEREFORE, NSR respectfully requests that the Court grant the following relief:

1. Issue a Judgment declaring that the present dispute concerning NSR's right to institute service to the Detroit Edison plants utilizing Toledo-based crews is a "minor dispute" under the RLA, and is subject to the compulsory and exclusive arbitration mechanisms set forth in section 3 of the RLA, 45 U.S.C. § 153;

2. Issue a Judgment declaring that Defendants' threat to cause a work stoppage or strike against NSR over the aforesaid minor dispute violates the RLA by seeking to circumvent the mandatory and exclusive authority of the National Railroad Adjustment Board;

3. Issue a Judgment declaring that, by threatening to engage in a work stoppage or strike, Defendants have breached their duty under Section 2 First of the RLA to settle all disputes through the RLA's mandatory dispute resolution/arbitration procedures;

4. Issue an Injunction restraining and enjoining the Defendants, individually and as officers or members and representatives of Defendants, their

agents, successors, deputies, servants, and employees, and all persons acting by, with, through or under Defendants, or by and through Defendants' orders, and all others acting in concert or participation with Defendants:

a. from calling, instigating, authorizing, seeking authorization for, encouraging, participating in, approving or continuing any strike, work stoppage, "sick-out," or slowdown against NSR or any other rail carrier affiliated with NSR, and all acts in furtherance or in support thereof;

b. from taking any action that has the purpose or effect of disrupting NSR's operations, including but not limited to engaging in a strike;

c. from failing to report for work unless otherwise excused under existing collective bargaining agreements and applicable work rules;

d. from interfering with ingress to and egress from said premises by NSR employees and other persons having business with NSR, including the delivery, unloading, dispatch and movement of rolling stock and equipment and the contents thereof;

e. from seeking to resolve the minor dispute with NSR by any means (including picketing, patrolling or economic pressure of any kind) other than by pursuing the minor dispute resolution procedures contained in the Railway Labor Act (RLA); and

f. directing the said Defendants and said other persons to take all steps within their power to prevent said strike, work stoppage, "sick-out," or slowdown, and all acts in furtherance or in support thereof from occurring or from continuing;

5. Issue an Injunction prospectively restraining and enjoining the Defendants, individually and as officers or members and representatives of all members of defendant labor organization, their agents, successors, deputies, servants, and employees, and all persons acting by, with, through or under defendant, or by and through defendants orders, and all others acting in concert or participation with defendant, from striking NSR or taking other forms of self-help, and all acts in furtherance or in support thereof including but not limited to engaging in a strike;

6. Order Defendants to pay the costs of these proceedings, including reasonable attorneys' fees; and

7. Grant NSR such other and further relief as the Court may deem proper and just in the circumstances.

Respectfully submitted,

12/7/16

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NORFOLK SOUTHERN RAILWAY COMPANY

VERIFICATION

I, Andrew Shepard, am employed by Norfolk Southern Corporation, the parent company of Norfolk Southern Railway Company ("NSR") as Director of Labor Relations, and I am authorized to execute this Verification on behalf of NSR. I hereby verify that I have read the foregoing Verified Complaint, and that the averments contained therein are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties relating to unsworn falsification to authorities.

Executed this 7th day of December, 2016.

ANDREW SHEPARD